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Comments by Canada on the Draft Guidelines for Implementation of the 1999 Second Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

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COMMENTS BY CANADA ON THE DRAFT GUIDELINES FOR
IMPLEMENTATION OF THE 1999 SECOND PROTOCOL TO THE 1954 HAGUE
*CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT
OF ARMED CONFLICT*

Canada is grateful to the UNESCO Secretariat for its efforts to initiate the development of a set of guidelines for implementation of the Second Protocol to the Hague Convention. Canada was a participant in the drafting of the Second Protocol, and is a State Party to the 1954 Hague Convention and both the First and Second Protocols. Canada therefore recognises both the importance of this endeavour and the challenges it involves, particularly in the absence of a similar set of guidelines for implementation of the Convention itself. The draft document prepared by the Secretariat provides a useful focus for States to consider how such a document should be developed, and what it should contain.

After careful examination of the present draft, however, and after reviewing the existing guidelines document for implementation of the 1972 World Heritage Convention, Canada considers that it may have been premature for the Secretariat to proceed with development of a draft in advance of the first meeting of the Intergovernmental Committee for Protection of Cultural Property in the Event of Armed Conflict. The first meeting of the Committee would ideally have been an opportunity for its members to consider the direction that a set of guidelines should take, and the most desirable process for its elaboration. The Committee would then have been able to provide direction to the Secretariat for its elaboration of a draft text.

As currently drafted, the text prepared by the Secretariat unfortunately contains a number of significant weaknesses and inconsistencies. Parts of the document are drafted in a manner appropriate for such guidelines. In other parts, it resembles an overly complex scholarly legal treatise. In some cases, it more resembles a discussion document posing policy-related questions for the Committee's consideration.

Canada sees two options: attempt to transform the present draft through detailed editorial comment; or step back and seek the Committee's direction as the basis for a completely new draft. Canada recommends that the current draft be retained by the Secretariat for its use as background information only, and that the Secretariat return to the Committee at its second meeting in the fall of 2007 to seek guidance. The Committee's consideration of this matter could be facilitated by two new documents.—

Canada recommends that the first such document be a detailed outline of what the guidelines could contain. This would allow the Committee to consider the overall direction the document should take, and the subjects that should be addressed therein. The Committee would then be in a position to direct how the guidelines should be developed. Options open to the Committee include the development of a number of consecutive drafts by the Secretariat for consideration, or possibly the creation of a

drafting sub-committee of the Committee, aided by the Secretariat.

The second document that Canada recommends be brought to the Committee by the Secretariat would be a discussion document posing a number of policy-related questions for debate by Committee members, leading to a decision on whether such issues should be addressed in the guidelines. Some possible questions are included in the present draft, such as the possible use of "buffer zones" around designated protected sites, while others are not included in the present draft, such as the question of criteria to be used by the Committee in determining which sites proposed for designation meet the definition of "greatest importance for humanity".

On a related point, it is Canada's view that one such issue contained in the present draft – possible use of the Hague emblem to mark protected properties – is not within the power of the Committee to decide, because the Second Protocol makes no mention of the emblem in its provisions. For that reason, before it can be considered for use in relation to the Second Protocol, it would appear necessary to raise the question, and seek the consent of, the States Parties to the Convention.

Canada notes the effort taken in development of the present draft, and attempts made in certain places in it to connect relevant guidelines with those in place for the 1972 Convention. Canada recommends that these efforts be expanded.

The existing guidelines for the 1972 Convention are very detailed and have been developed over a number of years. They therefore provide an extremely useful tool for development of guidelines for the Second Protocol. They also offer the possibility to consider ways in which efficiencies may be realized for both Member States and the Secretariat from a process standpoint, particularly in the scope, nature and format of information to be prepared by States for designation of sites under both Conventions, where appropriate. Canada supports the recent reorganization of the Cultural Sector of UNESCO that has resulted in responsibility for the 1972 Convention and Hague instruments falling under the same part of the organization, and we feel that this provides an excellent opportunity to explore positive synergies between those two regimes.

Canada appreciates the opportunity to comment on the draft document, and looks forward to future progress in this initiative.